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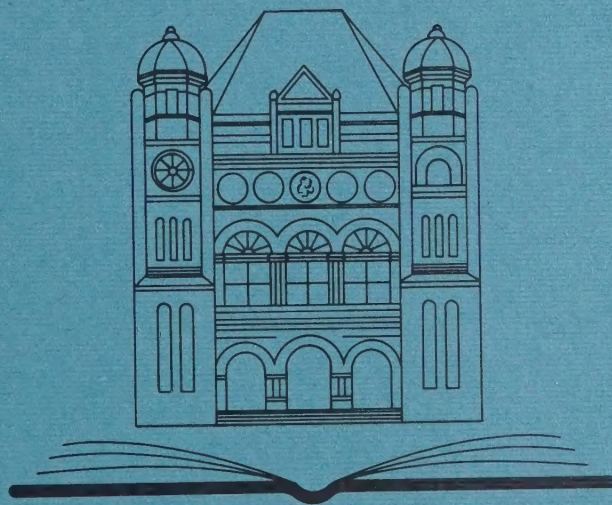
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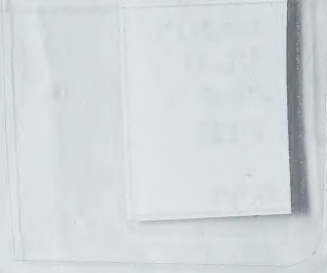


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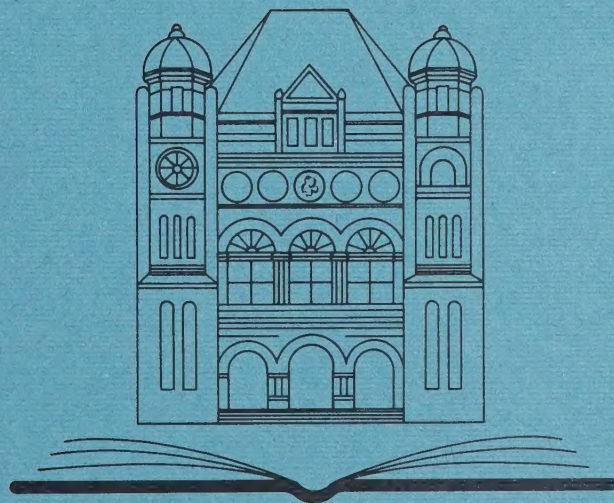


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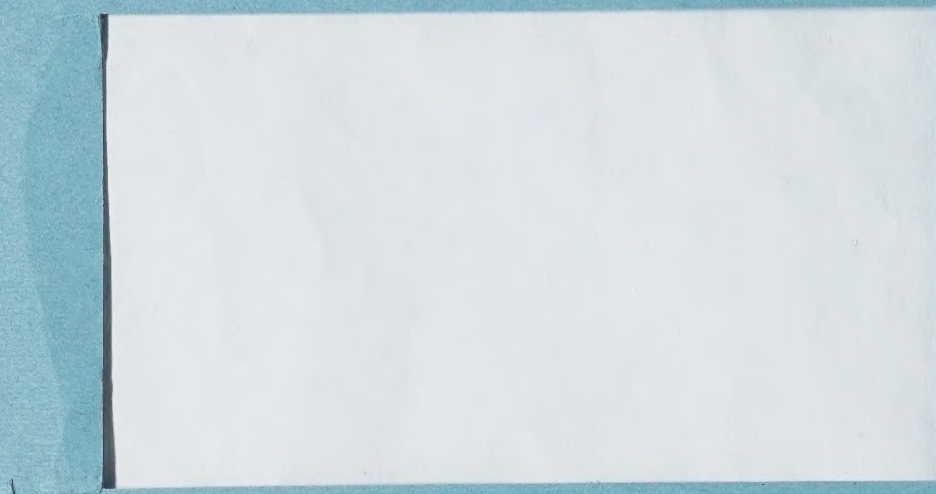


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**GUARANTEED ABORIGINAL
SEATS IN LEGISLATURES**

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March 1992



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INTRODUCTION

Electoral democracy in Canada fails Aboriginal people. Aboriginal peoples (Indian, Inuit, and Metis) make up almost 3.5% of the Canadian population, a percentage greater than that of any of the Atlantic provinces. However, since Confederation, only 12 self-identifying Aboriginal people have been elected to Parliament out of approximately 11,000 representatives. Three Metis, including Louis Riel, were elected in Manitoba in the 1870s when Metis electors were the majority. Of the nine Aboriginal people elected in this century, only three have been elected in districts where Aboriginal people did not constitute a majority. The remaining six Aboriginal Members have come from the Northwest Territories, where Aboriginal people form a majority in the Territories' two constituencies.¹

In Ontario, where the province's 250,000 Aboriginal people make up roughly 2.5% of the population, no Aboriginal person has ever been elected to the Legislative Assembly.²

There are a number of reasons for this lack of representation. For most of Canadian history Aboriginal people have been denied the franchise: the Inuit did not acquire the right to vote in federal elections until 1950, and status Indians, in 1960; Indians did not gain the right to vote in provincial elections in Ontario until 1954. The historical difficulties Aboriginal peoples have had with Canadian political institutions have fostered perceptions of distrust and cynicism about the political system and the utility of political participation. According to the Committee for Aboriginal Electoral Reform, a group of current and former Aboriginal MPs:

The failure of the Canadian government to work out constitutional accommodations recognizing inherent collective Aboriginal and treaty rights, coupled with Canada's history of assimilationist policies, have had an adverse impact on Aboriginal perceptions of Parliament and the value of participating within it. This has created a dilemma for many Aboriginal Canadians. Not

wanting to legitimize the constitutional structure in place in Canada, many Aboriginal leaders have argued against assuming voting rights.³

Another crucial factor is the electoral system itself. The successful candidate in a parliamentary election receives a plurality of the votes cast in a territorially defined constituency. This system of representation is incapable of accommodating the broad geographical distribution of Aboriginal peoples. There are only two federal ridings south of the 60th parallel in which Aboriginal peoples constitute more than 20% of the population, one in Manitoba and one in Saskatchewan. Only seven other ridings have more than 10% of the population identified solely as Aboriginal (one of these is in Ontario--the riding of Kenora-Rainy River). An additional seven federal ridings have an Aboriginal population of between 5 and 10%.⁴ Currently there is only Aboriginal MP elected south of the 60th parallel, though more than 900,000 Aboriginal people live south of 60.

Comparable figures for the distribution of Aboriginal people in Ontario provincial ridings is unavailable. However, according to a statistical profile compiled by the Ministry of Treasury and Economics (based on 1986 census data), which calculates the number of Aboriginal persons in each provincial riding on the basis of mother tongue, in only three provincial ridings do Aboriginal people make up over 3% of the population: Lake Nipigon (9%), Kenora (8.3%), and Algoma-Manitoulin (3.9%).⁵

One reform which has been proposed to redress this inequity (which is just as applicable to the provincial legislatures as Parliament) is separate, guaranteed seats set aside for Aboriginal representatives, for whom only Aboriginal people could vote. This reform was proposed as long ago as 1870 by Louis Riel; by the Malecite Nation in 1946; and by George Manuel, one of the driving forces behind the National Indian Brotherhood (now the Assembly of First Nations) in the late 1950s.⁶ In the early 1980s the idea was revived by the Native Council of Canada and the Alberta Metis, who cited the four seats set aside for the Maori in the New Zealand Parliament as a

model.⁷ The Maori seats were cited by the Anishinabek Nation when its representatives appeared before a committee of the Ontario Legislature in 1989 and recommended that the Legislature consider setting aside Aboriginal seats.⁸

The concept of guaranteed Aboriginal representation in the country's parliamentary institutions has received a great deal of publicity during the current round of constitutional negotiations. In its 1991 constitutional package, the federal government suggested that Aboriginal representation should be guaranteed in a reformed Senate.⁹ The parliamentary committee set up to study Ottawa's proposals, popularly known as the Beaudoin-Dobbie committee after its chairpersons, endorsed this recommendation.¹⁰ Guaranteed Aboriginal seats in the House of Commons have also been recommended by the Royal Commission on Electoral Reform and Party Financing in its recently released report; and its recommendation was based on the findings of the Committee for Aboriginal Electoral Reform, which is a group of current and former Aboriginal MPs.¹¹ The majority of Aboriginal groups and representatives who appeared before the Committee for Aboriginal Electoral Reform in 1991 endorsed the concept. Finally, the premiers of Nova Scotia and New Brunswick have argued that their respective legislatures should provide for separate seats for Aboriginal persons in their provinces, and have established electoral boundaries commissions to study the idea and how it could be implemented.¹²

It is important to point out that none of the advocates of separate Aboriginal seats have suggested that this reform could serve as a substitute for Aboriginal self-government. All agree that self-government will continue to be the first priority of Aboriginal peoples in Canada (including Ontario). Guaranteed Aboriginal seats is proposed as a complementary form of political representation, designed to ameliorate the structural inequalities in the electoral system affecting Aboriginal people.

This paper describes the systems of representation adopted in New Zealand and Maine for the separate representation of Aboriginal people in their respective legislatures. The paper concentrates on New Zealand as that country has the most established and sophisticated arrangement for separate representation, and is the model most

commonly cited by Aboriginal people and students of the subject in Canada. The paper then turns to recent developments in Canada. It outlines the work of the Committee for Aboriginal Electoral Reform and the recommendations of the Royal Commission on Electoral Reform and Party Financing. Finally, it discusses the recent debate in New Brunswick and Nova Scotia over introducing guaranteed Aboriginal seats in those provinces' Legislative Assemblies.

NEW ZEALAND

Introduction

New Zealand consists of two islands in the South Pacific, with a population of approximately 3.3 million.

The Maori people are the first known settlers of New Zealand, and are believed to have arrived from Polynesia sometime between 900 and 1350 A.D. The first census in 1857 counted 56,049, 48% of the total population. Thereafter the Maori population declined to a low of 4% (45,549) at the turn of the century, as a result of mortality from the civil wars with white settlers, disease, and poor living conditions. However, since World War Two the Maori population has grown steadily. By 1986, the percentage had crept up to 12% (around 400,000). The Maori people are the single largest ethnic minority in New Zealand.¹³

The Background to the Creation of Separate Maori Seats

New Zealand formally became a part of the British Empire in 1840, with the signing of the Treaty of Waitangi between the Crown and certain of the Maori chiefs. Article Three of this Treaty proclaimed:

The Queen will protect all the Maori people of New Zealand and give them all the same rights as those of the people of England.

Under these terms, the Maori were to acquire Imperial protection and the privileges of British citizenship in exchange for accepting the extinction of their territorial sovereignty. The first *Constitution Act* for New Zealand was passed by the British Parliament in 1846. This entirely excluded the Maori population from the franchise. The Governor of the colony refused to implement this constitution on the grounds that any attempt to impose it on the Maori population would lead to war.

The 1852 *Constitution Act* provided all Maori males with the right to vote upon the fulfilment of a nominal property requirement. However, because the Maori held property communally, most of them did not qualify and could not vote. Section 71 of the Act provided for the setting apart of certain districts within New Zealand in which the laws, customs and usages of the Maori would be maintained "for the Government of themselves, in all their Relations to and Dealings with each other." This section would have allowed a large measure of Maori self-government, but it was never implemented.

In 1862, when the General Assembly of New Zealand first debated the practical possibility of colonial control over native affairs, the Assembly voted against a motion calling for the participation of one or more Maori chiefs in the administration of the government.

The continual encroachment of white settlers on Maori land eventually provoked civil war between the Maori and the colonial government. Though the Maori were eventually defeated in what is known to historians as the Land Wars (1860-1876), they were never totally subjugated, unlike the Aboriginal people of Australia and the Indians in North America. The colonial government was therefore faced with the problem of placating the Maori, breaking their resistance to white settlement and defining a place for them in the political system.

The Creation of Separate Maori Seats

The solution devised by the New Zealand Parliament was enacted in the form of the *Maori Representation Act* of 1867. This Act created a dual system of representation. For the purposes of Maori representation, it divided New Zealand into four electoral districts and entitled adult Maori males to elect one representative from each constituency. Non-Maoris voted in 72 constituencies drawn to be roughly proportionate in size. Thus, under the *Maori Representation Act* non-Maori MPs represented all the people within their territorially defined ridings (including the Maoris), while the Maori MPs represented only the Maoris. The separate Maori seats can be defined as a system of communal representation,

which gives first place to non-territorial considerations in forming constituencies: it links together voters from the whole country on the basis of characteristics other than that of attachment to a particular locality.¹⁴

The Act defined an eligible Maori as "a male aboriginal inhabitant of New Zealand of the age of twenty-one years and upwards and shall include half-castes." For such voters there was no property qualification. Half-castes were allowed to register for either the Maori or the non-Maori ballot, but if they chose the latter were required to meet the property qualification to which non-Maori voters were subject. Voters with more Maori blood than half-castes had to register for the Maori ballot, while those with less had to register for the non-Maori ballot.

The Act also stipulated that only a full-blooded Maori could stand for election to a Maori seat. This provision was agreed to by Parliament out of fear that the whites living among the Maori would be able to manipulate the vote through the Maori's ignorance of English and of parliamentary politics.

As a result of the Act, the entire Maori population of 60,000 voted for only four MPs, while 250,000 white settlers voted for 72.

The following reasons have been given for the adoption of separate Maori seats by the white-dominated New Zealand Parliament:

- to pacify a defeated yet formidable adversary whose cooperation was useful in the orderly development of New Zealand society;
- to assimilate the Maori to the parliamentary political system as quickly as possible;
- to preclude any attempt by the Maori to set up a separate power base with which to circumvent parliamentary authority;
- to allay white settler fears of being swamped at the polls in areas of the country where the Maori were numerically significant; and
- to demonstrate to the British Colonial Office, which had expressed concern over the government's illegal confiscation of Maori land following the Land Wars, that the Parliament could treat the Maoris fairly.

A recent student of the *Maori Representation Act* has concluded that:

Maori representation arose as a politically deceptive strategy of indirect control which co-opted the Maori population while simultaneously conveying the illusion of democratic power sharing. The Maori were gerrymandered to the point where they became, and remained, a permanently outvoted minority in a political system designed to suit majority interests. In the final analysis, therefore, the velvet glove of parliamentary representation was offered to the Maori, but without relinquishing in any way the steel fist of settler hegemony.¹⁵

In 1867 the Maori seats were envisaged as a temporary concession until the Maori were assimilated into the dominant culture and subject to the same property qualification as non-Maori voters. Then the Maori would vote on the same ballot as all other New Zealand citizens and the separate seats would disappear. For this reason the Act contained a clause providing for its expiration after five years. However, the Act was renewed indefinitely because white settlers continued to be concerned that the mass transfer of Maori voters to the common voters' list would swamp the white electorate in a significant number of ridings.

In 1893 the Liberal Government extended the franchise to women, including Maori women, who were required to vote in Maori constituencies. The Government also terminated the dual Maori vote whereby Maori registered for the non-Maori ballot by virtue of meeting the property qualification could vote in a white constituency. When property qualifications were entirely abolished in 1896, it was laid down that Maoris could vote only in Maori constituencies. Thus the two electoral systems were further segregated.

The Political Development of the Maori under Separate Representation

The British settlers of New Zealand were determined to introduce Westminster style parliamentary government. But in multi-ethnic societies such as New Zealand, a unitary political system such as the British model may be feasible only when the dominant group is willing to exclude or coerce others. Not all multi-ethnic societies have to resort to drastic measures; they are unnecessary when one ethnic community so dominates that it can be confident that weaker groups will assimilate gradually without pressure from the state.¹⁶ When responsible government was granted in New Zealand the colonial government looked forward to the day when the Maori would be assimilated, but at the time they were a factor which could not be ignored. The *Maori Representation Act* was the legal means devised to hold the Maori at bay until they no longer posed a threat to the dominant culture.

But the Maori did not assimilate, and eventually began to work the separate seat system to their advantage. By the turn of the century talented Maori politicians were making their presence felt in Parliament. The most important of these was Jim Carroll, who was appointed to the cabinet in 1892 and became Minister of Native Affairs in the Liberal Government. He held ministerial office until 1912. The success of Carroll and other Maori he encouraged to enter politics demonstrated that Maori MPs could operate the system as well as any white MP.

At the same time all attempts by the Maori to establish autonomous, extra-parliamentary movements failed. A separate Maori Parliament was established in

1892 but it lasted for only 11 years. There were two reasons for its demise: not all the Maori tribes supported it, and the New Zealand Parliament would not tolerate any challenge to its legal authority. Whenever the Maori Parliament attempted to exercise its self-proclaimed powers in ways which breached the law, the New Zealand Parliament refused to recognize or cooperate in such action. The Maori MPs did not support the concept of a separate Maori Parliament.

In every election since 1943 the Labour party has won all four Maori seats. On some of the occasions when Labour has formed the government, the Maori seats have provided the margin of victory. From 1946 to 1949 Labour governed with a majority of only four seats and from 1957 to 1960 with only one seat. During the 1949 election campaign the National Party, the principal conservative alternative to Labour, argued that the Maori exercised excessive influence on the Labour Government. Students of New Zealand politics agree that such charges were effective among white voters and contributed to Labour's loss. Since the early 1970s the Labour Party has made it a policy that whenever it forms the government one of its Maori MPs will receive a cabinet post. In the 1980s a separate Maori political party was formed, but it has failed to win any of the Maori seats away from Labour.

Both Labour and the National Party are not above manipulating the Maori electoral law for partisan advantage. In 1974 and 1975 a Labour-controlled Parliament enacted two statutes designed to benefit that party's political fortunes. These broadened the Maori electorate to include any person descended from a Maori, granted Maori voters the option to register either on the Maori or non-Maori ballot, and stipulated that henceforward each Maori constituency would have approximately the same number of voters as the non-Maori seats. These amendments created the possibility of a change in the number of Maori seats, depending on how the Maori exercised their option to register on either the Maori or non-Maori ballot. At the time it was expected that more Maori would register on the former than the latter, causing an increase in the number of Maori constituencies, which were safe Labour seats. However the National

Party won the election held shortly thereafter, and in 1976 introduced another amendment to the electoral law which pegged the number of Maori seats at four regardless of how the Maori exercised their registration option.

The Weaknesses in the System of Separate Representation

Contemporary students of New Zealand politics have identified a number of serious flaws in the system of separate representation.

New Zealand electoral law provides for the regular redistribution of the non-Maori seats following reports of the non-partisan Representation Commission. In contrast, the electoral boundaries of the Maori seats have remained virtually unchanged (with one exception in 1954) since their inception. As a result, Maori representation is grossly unequal. When the boundaries were first promulgated in 1867 they were broadly based on tribal affiliations. But this basis of identity for the electoral boundaries has diminished since 1945, when the migration of the Maori from rural to urban areas began to accelerate.

Registration on the Maori ballot is complicated and serves to disqualify otherwise eligible voters. To exercise the Maori option, an individual who is at least 18 and of Maori ancestry must complete a special form that accompanies the census return every five years. Failure to do so, or incorrect completion of the form, invalidates access to the Maori option until the next census. Because of this procedure (it must be remembered that the rate of illiteracy is much higher among the Maori than the white population) the number of ballots disqualified in Maori ridings is high in comparison with the number in the non-Maori ridings.

Voting is highly inconvenient for the Maori. There are fewer voting booths for the Maori than for non-Maori voters. The substantial distances the Maori have to travel in order to vote discourages many.

The four Maori constituencies are so large, covering as they do the entire land mass of New Zealand, that even the most diligent Maori MP finds it impossible to service his or her constituents adequately.

It has been argued that the system of separate representation encourages both parties to neglect the interests of the Maori. Labour's hold on the Maori seats is so secure that there is little electoral incentive for the National or any of the minor parties to commit substantial resources to contest them. Labour meanwhile can afford to take the Maori vote for granted. The system of separate representation encourages the non-Maori electorate to neglect Maori concerns on the grounds this is the sole concern of the separately elected MPs. At the same time, it has prevented Maori voters in areas where their numbers are large from using their voting power to bring about a greater responsiveness on the part of non-Maori MPs and the parties. Finally, the "first past the post" electoral system used for election to the New Zealand Parliament is a serious obstacle to the electoral success of any separate Maori political party.

Conclusion

In recent years enrolment on the Maori ballot has steadily declined. In 1949, 77.7% of the eligible Maori population was registered on the ballot; by 1975, this figure had declined to 58.3%.¹⁷ Despite the changes to the electoral law introduced in the 1975 by Labour, which considerably increased the potential size of the Maori electorate (from 118,180 persons of half or more Maori descent to 154,400 who qualified as Maori or were descended from one), there has been no corresponding increase in the number of registrations on the Maori ballot. The increase in Maori enrolment since 1975 has been no more than the natural increase in population, plus the additional numbers resulting from the lowering of the voting age from 20 to 18 in that year. It has been estimated that approximately two-thirds of the Maori electorate (132,000 out of an estimated 209,600) are currently registered for the non-Maori ballot.¹⁸

Despite all the shortcomings of the separate system, and the apparent lack of interest in it by the Maori themselves, politically articulate Maori favour the retention of the separate seats. Why this is so has been well summed up by the 1986 *Report* of the Royal Commission on the Electoral System, which is otherwise critical of the Maori seats:

The four seats have become an important symbol to Maori people of their special status as the indigenous people of New Zealand. They guarantee that the Maori people will have representatives in Parliament who are elected by, and are accountable to, Maori voters, who can serve their constituents in a Maori way, and who can use their standing as MPs to promote and protect Maori rights and Maori interests within Parliament, the Government, and the wider community.¹⁹

Maori activists argue not that the seats should be abolished, but rather that their number should be increased to more accurately reflect the Maori's share of the New Zealand population, and that their size be reduced so as to enable the Maori MPs to better keep in touch with their constituents.²⁰

MAINE²¹

Maine entered the United States and adopted a state constitution in 1820. The Legislature is composed of a Senate and a House of Representatives, all of whose members are elected biennially in even-numbered years.

There are two Indian tribes in Maine, the Penobscots and the Passamaquoddies. Their numbers total roughly 4,200. (The population of Maine is approximately 1.2 million). The tribes are based on three state reservations.

Maine is the only state to provide for Indian representation in its Legislature.

Background

The earliest extant record of Indian representatives being sent to the House of Representatives from the Penobscots is in 1823 and from the Passamaquoddies in 1842. In this period there was no state law governing the election of Indians, so how the tribes elected their representatives was determined by tribal law and custom.

In 1866 the Legislature passed a law governing the election procedure for the representative of the Penobscot tribe. A similar agreement had been reached between the Legislature and the Passamaquoddy tribe (resident on two reservations) in 1852, but this agreement was not formally enacted as a state law until 1927. Under this law, the Passamaquoddy representative was to be elected alternately from each of the two reservations.

There are few recorded instances in which the Indian representatives spoke in the House and debated legislation.

In the 1941 session of the Legislature a bill was passed permanently ejecting the Indian representatives from the House, purportedly because one of them drank excessively. They continued to receive a salary but henceforward their status was reduced to that of lobbyists for their tribes at, but not in, the Legislature.

Current Status

In January 1975 the Legislature voted to re-establish the status of the Indian representatives. Their seating and speaking privileges on the floor of the House were restored, and their pay and benefits were upgraded. The two representatives now occupy seats 151 and 152 in the House.

The new law stipulated that the Indian representatives could not sponsor or vote on bills. The rationale for this limitation was that since Indians reside on reserves which are part of House and Senate districts and enjoy the same right to vote for candidates

for those districts as all other citizens, in effect they enjoy double representation. To allow their Indian representatives full legislative privileges would be unfair to non-Indian voters.

Members of the House represent approximately 7,500 constituents. The Penobscot representative has approximately 1,200 Indian constituents, and the Passamaquoddy representative has approximately 3,000. They are chosen in tribal elections held on the reserves at the same time as general elections.

THE CANADIAN DEBATE ON ABORIGINAL SEATS

The Royal Commission on Electoral Reform and Party Financing

The Royal Commission was appointed in November 1989 by the Mulroney government. Chaired by Pierre Lortie, a Quebec businessman,²² its mandate was to study the operation of electoral democracy in Canada and consider whether reforms were desirable. The Commission heard from over 500 groups and individuals at hearings held in 27 cities across Canada; conducted symposia at which academic experts and political activists debated the issues the Commission had identified as worthy of consideration; and sponsored 23 volumes of research studies. The Commission's report, which was released in late 1991 and stretches to four volumes, comprehensively analyzes elections and voting in Canada and proposes sweeping reforms.²³

The Appointment of the Committee for Aboriginal Electoral Reform

During the Commission's public hearings, several representatives from Aboriginal organizations recommended that the Commission consult more intensively with the Aboriginal community over the issue of Aboriginal representation in the House of Commons. The Commission asked Senator Len Marchand, who in 1968 became the first Indian elected to the House of Commons, to undertake this task. After some preliminary consultations in January 1991 Senator Marchand formed the Committee for Aboriginal Electoral Reform. Senator Marchand chaired the Committee, whose membership

consisted of Jack Anawak, MP for Nunatsiak; Ethel Blondin, MP for Western Arctic; Willie Littlechild, MP for Wetaskiwin; and Gene Rheaume, former MP for the Northwest Territories when it comprised a single constituency.

After consulting with Aboriginal peoples across the country, the Committee released a report endorsing guaranteed Aboriginal seats in the House of Commons. The Committee's findings are reproduced in volume four of the Royal Commission's report. They are summarized below.

The Report of the Committee on Aboriginal Electoral Reform

The Committee recommended that the House of Commons introduce guaranteed parliamentary seats for Aboriginal people, termed Aboriginal Electoral Districts (AEDs). The Committee argued:

There has been a general feeling among Aboriginal people that the electoral system is so stacked against them that AEDs are the only way they can gain representation in Parliament in proportion to their numbers. Direct representation of Aboriginal people would help to overcome long-standing concerns that the electoral process has not accommodated the Aboriginal community of interest and identity. Aboriginal electors would elect Members of Parliament who would represent them and be directly accountable to them at regular intervals. MPs from AEDs would understand their Aboriginal constituents, their rights, interests, and perspectives on the full range of national public policy issues.²⁴

AEDs would overcome the problem posed by the broad geographical distribution of Aboriginal peoples and provide them with representation in the House of Commons in numbers roughly corresponding to their share of the Canadian population. Thus, AEDs would not grant Aboriginal people special status, but rather equality in the electoral system.

The Committee proposed that AEDs could be introduced by modifying the formula set out in the *Representation Act, 1985*²⁵ for calculating the size of the House of Commons. Under this formula, Canada's population (as determined by the decennial census) is divided by 279, giving an electoral quotient.²⁶ The population of each province is divided by the quotient, giving the number of seats in the Commons for each province.²⁷ Under the Committee's proposal, the number of AEDs would be determined by dividing the number of self-identifying Aboriginal people in a province by that province's quotient. For example, if there were 150,000 Aboriginal people in a province and that province's quotient was 75,000, then two AEDs would be created.²⁸ This scheme would guarantee Aboriginal people one or more AEDs in each province when the number of self-identifying Aboriginal people reached the quotient. The number of AEDs would increase in step with the growth of the Aboriginal population, and not remain frozen as are the Maori seats in New Zealand.

The AED formula would not apply in the Northwest Territories, whose two seats in the House of Commons already contain Aboriginal majorities, nor in the Yukon, where the Aboriginal population is too small to justify the creation of an AED. The formula would not apply in Atlantic Canada either, because the Aboriginal population in each province fell short of the quotient set out in the *Representation Act*. The Committee recommended that the *Constitution Act, 1867* be amended to provide for a specific number of seats for Aboriginal people in the Atlantic provinces.

The Committee emphasized that it should be up to Aboriginal people to identify themselves for the purpose of voting in an AED, and not the government. AEDs would be created only where Aboriginal people chose to identify themselves. An Aboriginal who chose to vote in an AED should not be allowed to also vote in the general electoral district in which he or she resided: this respected the "one person, one vote" principle.

In those provinces where the application of the formula would result in the creation of more than one AED, the Electoral Boundaries Commission already in existence for that province would be responsible for drawing the boundaries of the AEDs. Under the *Representation Act*, the Commissions are permitted to adjust the size of a provincial

quotient by 25% in any constituency in order to accommodate a community of interest or to maintain a manageable size for constituencies in sparsely populated rural or northern regions. Thus, many ridings represented in the House of Commons actually contain up to 25% more or less constituents than the quotients strictly allow. The Committee recommended that the Commissions be allowed to deviate generously from the provincial quotients in drawing the boundaries of AEDs in order to recognize treaty boundaries, communities of Indians, Metis or Inuit, the geographical size and shape of a proposed District, and other factors.

The Committee suggested that in addition to the introduction of AEDs, Aboriginal people should be encouraged to participate in the administration of elections, in order to overcome their historical alienation from the electoral system. Two Aboriginal members should be appointed to each Electoral Boundaries Commission. The Commissions should be required to consult widely with Aboriginal communities over proposed boundary lines for AEDs, and no report should be submitted by a Commission to Parliament unless Aboriginal people had the opportunity to comment upon it. Moreover, employment equity should be introduced to ensure that Aboriginal people were appointed to senior positions (such as returning officer) throughout the electoral bureaucracy.

The Committee made a number of other recommendations which were designed to remove the barriers Aboriginal people encountered in the electoral process. These included:

- amending the *Canada Elections Act*²⁹ to enable homeless people to vote if they identified a local shelter or hostel as their residence;
- amending the Act to allow voters who have not been enumerated to register on election day;
- making polling stations more accessible in sparsely populated constituencies; and
- printing all elections materials in the local Aboriginal language where requested by the Aboriginal community.

The Report of the Royal Commission

The Royal Commission endorsed the Committee's report and recommended that Parliament introduce AEDs. According to the Commission, for this reform to work three conditions had to be met:

- there must be a consensus among Aboriginal people in favour of AEDs;
- the implementation of AEDs must be compatible with Canadian traditions and the party system; and
- there must be compelling reasons for non-Aboriginal Canadians to support the measure.

Regarding the first condition, the Commission was satisfied that the extensive consultations with Aboriginal peoples that it and the Committee had conducted revealed general support for the concept of AEDs, and agreement that their introduction would not detract from, but rather complement, the Aboriginal pursuit of self-government. Second, providing for the distinct status of Aboriginal peoples in the electoral system could be supported by a number of precedents demonstrating that representation in the House of Commons had always been structured to accommodate communities of interest.³⁰ Finally, the Commission argued that non-Aboriginal Canadians should accept the creation of AEDs for the following reasons:

- Aboriginal peoples have always enjoyed a unique constitutional status. Beginning with the *Royal Proclamation* of 1763, the British Crown declared its recognition of Indian peoples as constituting nations separate from European settlers. At Confederation this responsibility was assumed by the federal government under the terms of the *Constitution Act, 1867*. The *Constitution Act, 1982* declares that Aboriginal treaty rights have constitutional status.
- Aboriginal peoples have always expressed a desire to preserve their separate identity. They have always resisted any proposal by governments that they be integrated into "white" society, such as the Trudeau government's 1969 *White Paper*.³¹ Aboriginal peoples' demand for self-government is motivated by their commitment to separate status and a distinct identity.

- Under s. 92(14) of the *Constitution Act, 1867*, Parliament has the exclusive power to legislate in relation to "Indians, and Lands reserved for the Indians." The federal government provides Aboriginal peoples with services other Canadians receive from provincial and local governments. To the extent that non-Aboriginal Canadians are represented in the provincial legislatures, they have a voice in the formation of those policies that fall within provincial jurisdiction. In contrast, for Indian and Inuit peoples it is the Parliament of Canada which has jurisdiction in these matters. It is critical therefore that they be represented in Parliament, given that their particular interests and general welfare are largely determined by the extent to which they are effectively represented there.
- In *Reference re: Electoral Boundaries Commission Act, ss. 14, 20 (Sask.)* (1991)³² the Supreme Court of Canada declared that Canadians had a Charter right to "effective representation" in the country's legislative bodies. Aboriginal peoples should not be denied the right to effective representation in Parliament simply by virtue of the fact that non-Aboriginal Canadians have settled in areas adjacent to their communities, thereby diminishing the efficacy of the vote of Aboriginal communities by virtue of their greater numbers. The introduction of AEDs would guarantee Aboriginal peoples their constitutional right to effective representation.

The Commission argued that the introduction of AEDs would not constitute a legal precedent for extending the same right to special representation to other ethno-cultural communities, because only the Aboriginal peoples have a historical and constitutional basis for a claim to direct representation, and a continuous link to the land.

On the other hand, AEDs would not "ghettoize" Aboriginal peoples or isolate their representatives in Parliament. Aboriginal voters who chose to vote in a AED would cast their ballots for candidates who spoke not only to their specific representational concerns, but also to the broader issues of national politics from an Aboriginal perspective. The Commission suggested that "in this way, Aboriginal peoples could participate in Canadian politics without being assimilated. Aboriginal MPs would participate in the full range of deliberations and decisions before the House of Commons."³³

The Commission emphasized that this model of Aboriginal constituencies did not guarantee Aboriginal peoples a specific number of parliamentary seats, unlike the Maori seats in the New Zealand Parliament. Instead it offered a process for creating Aboriginal

constituencies: it was up to the Aboriginal peoples themselves to take advantage of the process by registering to vote in AEDs.

The Commission estimated that up to eight AEDs could be created across the country, based on its estimates of the number of Aboriginal voters in each province: one in each of Quebec, Manitoba, Saskatchewan and Alberta; two in Ontario; and one or two in British Columbia. The Commission agreed with the Committee on Aboriginal Electoral Reform that AEDs were not necessary in the Northwest Territories, and could not be created in the Yukon or the Atlantic provinces because of the small size of the Aboriginal population in those jurisdictions. It endorsed the Committee's recommendation that the federal government consider a constitutional amendment to provide for an AED in the Atlantic provinces.³⁴

New Brunswick

On March 18, 1991 Premier McKenna announced that his government had appointed an Electoral Boundaries Commission to draw up new electoral boundaries for the Legislative Assembly and to "consider and propose the best approach to ensure that New Brunswick's aboriginal people are given the best representation in the Legislative Assembly."³⁵ There are approximately 8,000 Mi'kmaq and Maliseet in New Brunswick.³⁶ The premier indicated that the province's plan would be modelled on Maine's, where the two Indian representatives sit in the state legislature without voting rights. Two seats for Aboriginal representatives would be added to the Assembly, which currently has 58 Members.

Following the Premier's announcement, Chief Roger Augustine, president of the Union of New Brunswick Indians, indicated that the proposal looked "promising," though he and his colleagues had not examined the concept of separate seats in any detail. He added that he believed New Brunswick Aboriginal people would prefer that any representatives elected by them to the Assembly have the right to vote.³⁷

The Electoral Boundaries Commission has just completed its first round of public hearings. It is now drafting a report based on the testimony it heard during the hearings. This report will include a draft of proposed new electoral boundaries and a formula for introducing Aboriginal seats in the Assembly. The Commission expects to release its report in June. The report will then be considered by a legislative committee, which will have 120 days to respond to it. Once the Commission has received the Committee's response, it will begin another round of hearings where members of the public will be able to comment on the Commission's report and the Committee's response to it. The Commission anticipates releasing its final report in the summer or fall of 1993.³⁸

Nova Scotia

When Don Cameron became Premier of Nova Scotia in February 1991, he indicated that one of his priorities was to introduce a separate seat in the provincial legislature for a representative of the province's 10,000 Mi'kmaqs.³⁹ In May the House of Assembly approved a motion introduced by the Premier which expressed support in principle for a separate Mi'kmaq seat, and appointed a Select Committee to devise terms of reference and a mandate for a Provincial Electoral Boundaries Commission.⁴⁰

The Select Committee held public hearings in May and June and released its report in early July.⁴¹ The report set out the terms of reference and composition of the Provincial Electoral Boundaries Commission and instructed the Commission to draw up electoral boundaries for a 52-seat Legislative Assembly with one additional seat for a Mi'kmaq Member. The Committee also directed the Commission to "undertake a broad and thorough consultation with all native groups, and the native community at large, in this Province, before making its recommendation respecting a Mi'kmaq seat in the Legislature."⁴² The Committee's recommendations were accepted by the House of Assembly.

The Provincial Electoral Boundaries Commission went to work in the fall of 1991. It held 17 days of public hearings in the fall of 1991. In addition, the Commission sponsored a two-day conference in February 1992 attended by Mi'kmaq leaders from all

over Nova Scotia, including band councillors or chiefs from 12 out of the 13 Mi'kmaq bands, as well as executive members from all provincial Mi'kmaq organizations.

According to the Commission, a majority of the participants at the conference endorsed the concept of a Mi'kmaq seat in the House of Assembly, but also agreed that the possible ramifications of this reform had to be thought through carefully before the Mi'kmaq people formally supported it. For example, some participants feared that endorsement of a separate seat might be regarded by the provincial government as a sign that the Mi'kmaqs might be willing to compromise their first priority, self-government. Those participants who supported the introduction of a Mi'kmaq seat argued that representation in the Assembly would be meaningless unless the Mi'kmaq representative had the same voting rights as all the other Members.⁴³

A minority of conference participants argued that instead of occupying a seat in the Assembly, the Mi'kmaq representative should be recognized by the provincial government as the "ambassador" from the sovereign Mi'kmaq nation, empowered to speak on behalf of his or her people and to negotiate agreements on its behalf. Such a representative should not be a regular Member of the Assembly with the right to vote, but separate from the other Members like the Speaker of the Assembly.

The conference concluded that there was interest among the Mi'kmaq in having representation in the House of Assembly. However, it was also agreed that more time was needed to consider the matter fully, and that further discussion needed to take place within Mi'kmaq communities and organizations in order to ensure that the Mi'kmaq people were fully informed about the issues and had an opportunity to express its views. Several speakers stressed the importance of speaking with a united voice on the matter.⁴⁴

The Provincial Electoral Boundaries Commission released its report in March 1992. It made the following recommendation about a Mi'kmaq seat in the House of Assembly:

On the basis of the consultation process with, and at the request of, the Mi'kmaq community, the Provincial

Electoral Boundaries Commission hereby recommends that the proposed Mi'kmaq seat in the Nova Scotia House of Assembly not be implemented at this time.

However, because the Mi'kmaq people have expressed an interest in a legislative position of some kind, but are not prepared to make a final decision within the time frame under which the Commission must report to the Legislature, the Commission recommends that the House of Assembly adopt a procedure, including an appropriate budget and tentative deadline, for further consultation with the Mi'kmaq people.⁴⁵

CONCLUSION

This paper has described how two democracies, New Zealand and Maine, provide for Aboriginal representation in their legislatures, and the state of the debate in Canada on whether this form of special representation should be introduced here. Thus far, it appears that while many Aboriginal leaders and spokespersons endorse the concept of guaranteed representation, their peoples have not studied it in any detail. It is unlikely that governments will move to introduce guaranteed Aboriginal seats without the public support of Aboriginal peoples themselves. However, the Royal Commission on Electoral Reform has suggested that if its model was introduced and initially only one or two provinces decided to create AEDs, this would constitute sufficient endorsement for the concept, on the grounds that "profound social innovations take time to mature, and this one should be no exception."⁴⁶

If a consensus does emerge in support of implementing Aboriginal seats, the model proposed by the Royal Commission appears to address the shortcomings identified in the New Zealand system. Under the Royal Commission's scheme, the number of Aboriginal seats would bear some relation to the Aboriginal share of the total population, and the boundaries of the ridings would be regularly adjusted in light of population shifts and communities of interest among Aboriginal peoples. This model offers Aboriginal peoples an option for increasing their legislative representation, which they would be free to embrace or reject. If AEDs were created, it would be because Aboriginal voters chose

to register in them. It appears unlikely that Aboriginal peoples would accept the Maine model, whereby their representatives would have no voting rights.

If some form of guaranteed Aboriginal representation is introduced by a Canadian legislature, the aspiring Aboriginal politician seeking election in an AED will have to decide whether the needs of his or her people can best be met by joining an existing party, forming a new one, or running as an Independent. Those sceptical of the concept of Aboriginal seats have suggested that one or two Aboriginal MPs or MPPs will likely have little influence in one of the established parties.⁴⁷ However, as noted above, the Maori MPs in the New Zealand Parliament have managed to work the system to their advantage.

FOOTNOTES

¹ Canada, Royal Commission on Electoral Reform and Party Financing, *What Canadians Told Us* (Ottawa: Supply and Services, 1991), p. 243.

² John Brant (also known as Tekarihogen) was elected to the Legislative Assembly of Upper Canada for Haldimand in 1830. He sat in the Assembly for only one month, when the legality of his election was successfully contested. The Honourable Peter North, Minister of Tourism and Recreation and NDP Member for Elgin, was adopted by a status Indian as a baby.

³ Royal Commission on Electoral Reform and Party Financing, *What Canadians Told Us*, p. 242.

⁴ *Ibid.*, p. 243.

⁵ See Ontario, Ministry of Treasury and Economics, *Profile of Ontario's Provincial Electoral Districts* (Toronto: The Ministry, April 1989), pp. 2, 36, 40.

⁶ See David C. Hawkes and Bradford W. Morse, "Alternative Methods for Aboriginal Participation in Processes of Constitutional Reform," in *Options For A New Canada*, Ronald L. Watts and Douglas M. Brown, eds. (Toronto: University of Toronto Press, 1991), p. 180.

⁷ Metis and Non-Status Indian Constitutional Review Commission, *Native People And The Constitution Of Canada: The Report Of The Metis And Non-Status Indian Constitutional Review Commission* (Ottawa: Mutual Press, 1981), pp. 34-41; and Alberta Federation of Metis Settlement Associations, *Metisism: A Canadian Identity* (Alberta: The Federation, June 1982), pp. 23-25.

⁸ See Ontario, Legislative Assembly, *Transcript of Proceedings*, 34th Parliament, 2nd Session (21 June 1989). The Anishinabek Nation presented a substantial brief to the Committee entitled *The Provincial Electoral Process: Indian Political Representation* (April 1989).

⁹ Canada, Government of Canada, *Shaping Canada's Future Together: Proposals* (Ottawa: Supply and Services, 1991), pp. 8-9, 18-19.

¹⁰ Canada, Special Joint Committee of the Senate and House of Commons, *A Renewed Canada*, 34th Parliament, 3rd Session (28 February 1992): 33, 52.

¹¹ Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy*, vol. 1 (Ottawa: Supply and Services, 1991), pp. 169-193.

¹² For Nova Scotia, see Nova Scotia, Legislative Assembly, *Hansard: Official Record of Debates*, 55th General Assembly (24 May 1991): 5844; for New Brunswick, see Kevin Cox, "N.B. seat proposed for natives," *Toronto Globe and Mail*, 19 March 1991.

¹³ New Zealand, Royal Commission on Social Policy, *Report. Volume I: New Zealand Today* (Wellington, New Zealand: Government Printer, 1986), chap. 1.

¹⁴ W.J.M. Mackenzie, *Free Elections* (London: George Allen & Unwin, 1958), p. 32.

¹⁵ Augie Fleras, "From Social Control towards Political Self-Determination? Maori Seats and the Politics of Separate Maori Representation in New Zealand," *Canadian Journal of Political Science* 38:3 (1985): 558.

¹⁶ Cynthia H. Enloe, *Ethnic Conflict and Political Development* (Boston: Little, Brown and Company, 1973), p. 135.

¹⁷ New Zealand, Royal Commission on the Electoral System, *Towards a Better Democracy* (Wellington, New Zealand: Government Printer, 1986), p. B-62.

¹⁸ *Ibid.*, pp. B-62-63.

¹⁹ *Ibid.*, p. 18.

²⁰ E.M. McLeay, "Two Steps Forward, Two Steps Back: Maori Devolution, Maori Advisory Committees and Maori Representation," *Political Science* 43:1 (1991): 37.

²¹ This section is based on newspaper articles from the *Portland Press Herald* and the *Bangor Daily News*, and a paper prepared by Glenn S. Starbird entitled *A Brief History of Indian Legislative Representatives in the Maine Legislature* (Augusta, Maine: State Law Library, January 1983).

²² The other members were Pierre Fortier, William Knight, Robert Gabor and Lucie Pepin.

²³ Volumes One and Two were both entitled *Reforming Electoral Democracy*; volume Three, *Proposed Legislation*; and Volume Four, *What Canadians Told Us*.

²⁴ Royal Commission on Electoral Reform and Party Financing, *What Canadians Told Us*, p. 247.

²⁵ *Representation Act, 1985*, S.C. 1986, c. 8.

²⁶ The figure of 279 was arrived at by subtracting two seats for the Northwest Territories and one for the Yukon from 282, which was the total number of seats in the House of Commons as determined by the formula set out in the *Representation Act* of 1974.

²⁷ The Act ensures that no province will have fewer MPs than it has Senators, and that no province will have fewer seats than it had in 1976, or had during the 33rd Parliament when the Act was passed. See C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), p. 59.

²⁸ Royal Commission on Electoral Reform and Party Financing, *What Canadians Told Us*, p. 252.

²⁹ *Canada Elections Act*, R.S.C. 1985, c. E-2, as amended.

³⁰ For example, s. 80 of the *Constitution Act, 1867* entrenched special rights in the drawing of electoral boundaries for a number of English-speaking communities in the Quebec legislature. See Royal Commission on Electoral Democracy and Party Financing, *Reforming Electoral Democracy*, vol. 1 (Ottawa: Supply and Services, 1991), pp. 178-179. This section was repealed by the *Act respecting electoral districts*, S.Q. 1970, c. 7.

³¹ See Sally Weaver, *Making Canadian Indian policy: the hidden agenda* (Toronto: University of Toronto Press, 1981).

³² *Reference re: Electoral Boundaries Commission Act, ss. 14, 20 (Sask.)* [1991] 2 S.C.R. 158.

³³ Royal Commission on Electoral Democracy, *Reforming Electoral Democracy*, vol. 1, p. 184.

³⁴ The Commission acknowledged that under its proposed model the total Aboriginal population of Quebec was insufficient to justify a separate AED for northern Quebec, as Inuit spokespersons who appeared before the Commission requested; neither were there sufficient numbers to justify the creation in western Canada of separate AEDs for the Indians and the Metis. *Ibid.*, p. 186.

³⁵ Quoted in Kevin Cox, "N.B. seat proposed for natives," *Toronto Globe and Mail*, 19 March 1991.

³⁶ The population of New Brunswick at the end of 1991 was 727,300.

³⁷ Chris Morris and Tu Thanh Ha, "N.B. ponders native seats for legislature," *Montreal Gazette*, 19 March 1991.

³⁸ This paragraph is based on information supplied by officials at the New Brunswick Electoral Boundaries Commission.

³⁹ Reg Fendrick, "Cameron delivered on promise for change," *Halifax Daily News*, 29 December 1991. The population of Nova Scotia at the end of 1991 was 903,700.

⁴⁰ Nova Scotia, Legislative Assembly, *Hansard: Official Record of Debates*, 55th General Assembly (24 May 1991): 5844.

⁴¹ Nova Scotia, Legislative Assembly, *Report of the Select Committee on Establishing An Electoral Boundaries Commission* (Halifax: The Committee, July 1991).

⁴² *Ibid.*, pp. 7-8.

⁴³ This point was also emphasized by Dan Paul, the Executive Director of the Confederacy of Mainland Mi'kmaq, in a separate presentation to the Commission. See Nova Scotia, Provincial Electoral Boundaries Commission, *Transcript of Proceedings* (26 November 1991).

⁴⁴ See Nova Scotia, Provincial Electoral Boundaries Commission, *Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission* (Halifax: The Commission, March 1992), pp. 129-142.

⁴⁵ *Ibid.*, p. 79.

⁴⁶ Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy*, vol. 1, p. 183.

⁴⁷ See e.g., Provincial Electoral Boundaries Commission, *Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission*, p. 133.

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